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Boston Lifts Construction Ban Under New COVID-19 Protocols

By: Rich May



Announced and effective on May 5, 2020, the City of Boston partially lifted its construction ban after implementing its COVID-19 Safety Policy for Construction. Prior to this date, the City had been granting exemptions, on a case-by-case basis, to applicants that could demonstrate a legitimate need to accelerate their projects. In addition to customary permitting criteria, contractors will now be required to submit the following for each site: (1) a COVID-19 Safety Plan and (2) Compliance Affidavit signed by the contractor.

The Inspectional Services Department will provide each applicant with the "COVID-19 Construction Site Best Practices Worksheet," which compiles the construction industry's best practices to prevent potential COVID-19 hazards, as recommended by the Center for Disease Control and Prevention, the Occupational Safety and Health Administration, and the Commonwealth of Massachusetts. In general, each Plan must follow applicable guidelines and regulations issued by these institutions but, at a minimum, must address the items on the Worksheet and/or explain why a listed "Best Practice" is not applicable to the specific project. Ongoing failure by the contractor to comply with its own site-specific Plan may result in permit revocation.

The City's new policy is an integral part of its plan to slowly and safely allow people back to work. As of **May 18, 2020**, and subject to the above criteria, the City will allow work for the following categories of sites that have been prepared to conform with an approved COVID-19 Safety Plan: (1) hospitals; (2) public schools; (3) residential properties consisting of 1-3 units; (4) public roads and utilities; and (5) outdoor work such as steel erection. The City has identified projects that fall under these categories as "essential." On **May 26, 2020**, the City will expand its definition of "essential construction" to replicate the broad criteria for "essential activity" set forth in the Governor's business closure order and list of essential services. At no point in time will the City be entitled to further expand its definition of "essential construction" beyond that of the Commonwealth. Furthermore, Commonwealth-backed projects remain exempt as the City lacks the authority to regulate them.

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As the pandemic continues and businesses begin to re-open, more municipalities will likely follow Boston's lead. The City of Somerville announced a similar strategy to allow construction for certain identified public projects. **Commencing on June 1, 2020** until further notice, private construction and various other public projects will be permitted in phases. Like Boston, all permits in Somerville will be subject to review and approval of COVID-19 health and safety measures as well as all applicable state and federal regulations. Conversely, Cambridge construction is still generally prohibited (with case-by-case exceptions) but is expected to return under similar timelines and conditions as those imposed by Boston and Somerville.

While the new protocols are intended to address current health and safety hazards, developers should expect to be subject to these new criteria well into the foreseeable future. As advised by the City of Boston, this is a critical period for large-scale developers to begin preparing their sites and workforce in accordance with their COVID-19 Safety Plans.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney Atakelti Desta.

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